IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 137 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JJJJ

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue the following two questions have been referred to this court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961.

"1. Whether, on the facts and in the circumstances of the case, the assessee trust could be treated as a specific trust and whether the shares of the beneficiaries be treated as determinate?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the assessee trust was not a discretionary trust, but a specific trust and hence the provisions of section 164 of the Income-tax Act, 1961 could not be attracted?"

2. We have heard learned advocate Shri B.B. Naik appearing for the revenue. Though served, nobody has appeared for the respondent assessee.

3. Our attention has been drawn to a judgment delivered by this court in case of CIT v. Hansaben Umabhai Family Trust in I.T.R. No. 15 of 1983 decided on 29.8.96. It has been submitted that in the case of the very assessee for the earlier year this court had decided the reference referred to hereinabove.

4. The said reference has been decided in favour of the assessee and against the revenue. In the circumstances, we answer the questions referred to us in favour of the assessee and against the revenue.

The reference thus stands disposed of with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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